IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3873 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRA ALIAS DHARMO ALIAS DHAMESH INDRAVADAN VYAS

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for the petitioner and learned A.G.P. Mr. K.T. Dave for the respondents nos.1, 2 and 3.

1 The detention order dated 30-4-1999 passed by the Commissioner of Police, Ahmedabad (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner-detenu, copy of which is produced at Annexure "C" inter alia indicate that one Prohibition case bearing CR no.5013/99 was registered against the petitioner-detenu on 5-2-1999 at Bapunagar Police Station wherein countrymade liquor has been seized from the possession of the petitioner.

2.1 The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements dated 28-4-1999 and 29-4-1999 respectively against the petitioner-detenu with regard to bootlegging activities of the petitioner-detenu and have narrated in respect to incidents dated 1-2-1999 and 26-1-1999.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the petitioner vide representation dated 24-5-1999 has claimed report of chemical analyzer in respect to material seized during the search of criminal case registered at Bapunagar Police Station under Cr no.5013/99. The petitioner has also demanded the copies of the statements. It is submitted on behalf of the petitioner that the respondents nos.1 and 2 have rejected the said representation without application of mind and without providing the petitioner-detenu with statement of witnesses as well as report of chemical analyzer as claimed. That the communication of rejection dated 28-5-1999 was served to the detenu in jail. That the respondents have precluded the petitioner from making effective representation by not supplying the vital document required and claimed by the petitioner which has violated the mandate of Article 22(5) of the Constitution rendering the impugned order invalid.

5. On scrutiny of papers, it appears that the affidavit dated 28-11-1999 filed by the respondent no.1-Commissioner of Police Mr. P.C. Pandey is devoid of any explanation regarding non supply of vital documents claimed vide representation dated 24-5-1999. In the absence of any such explanation, the contention raised by the petitioner-detenu requires to be accepted.

8. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 30-4-1999 passed by the Commissioner of Police, Ahmedabad is hereby quashed and set aside. The petitioner-detenu-Dharmendra alias Dharmo alias Dharmesh Indravadan Vyas is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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